STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO ROBERTO ROSADO,

Defendant-Appellant.

UNPUBLISHED
October 6, 2009

No. 287455
Oakland Circuit Court
LC No. 2008-219555-FH

Before: Murray, P.J. and Markey and Borrello, JJ.

PER CURIAM.

Defendant appeals by right his conviction after bench trial, of possession with intent to deliver 50 grams or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(*iii*). The trial court sentenced defendant as a second habitual offender, MCL 769.10, to serve 100 to 360 months in prison. We affirm, but remand for ministerial correction of the judgment of sentence. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After hearing the evidence, the trial court, sitting as the finder of fact, concluded that, upon executing search warrants on May 15, 2007, at two residences in Pontiac, the police found 201 grams of cocaine in one location, and 40 grams of cocaine at the other, under circumstances that tied the cocaine to defendant.

Defendant's sole argument on appeal is that the trial court erred in refusing to suppress the evidence of the discovery of the larger quantity of cocaine, which defendant challenged on the ground that the affidavit supporting the search warrant was legally deficient.

Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution[1] may be excluded from evidence at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). See also *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961) (applying the Fourth Amendment to the states through the Fourteenth Amendment).

[1] See also Const 1963, art 1, § 11.

The constitutional requisite for the issuance of a search warrant is that probable cause exists to justify the search. US Const, Am IV; MCL 780.651; *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006). "Probable cause to issue a search warrant exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place." *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000).

Ordinarily, evidence seized under a warrant issued without probable cause is inadmissible at a criminal trial. *Id*. at 418; *People v Hellstrom*, 264 Mich App 187, 193; 690 NW2d 293 (2004). However, the exclusionary rule is only a judicially created remedy to safeguard constitutional rights but is not itself a personal right. *People v Goldston*, 470 Mich 523, 528-529; 682 NW2d 479 (2004), quoting *United States v Leon*, 468 US 897, 906; 104 S Ct 3405; 82 L Ed 2d 677 (1984). The purpose of the exclusionary rule is to deter police misconduct, not to rectify the errors of magistrates. *Goldston, supra* at 529-531, citing *Leon*, *supra* at 916-917. The exclusionary rule is thus subject to various exceptions, including the good-faith exception, which our Supreme Court formally adopted in *Goldston, supra* at 541. In doing so, the Court relied heavily on *Leon*, including the following, approving summation of the latter case:

> The [United States Supreme] Court concluded that the exclusionary rule should be employed on a case-by-case basis and only where exclusion would further the purpose of deterring police misconduct. The Court emphasized, however, that a police officer's reliance on a magistrate's probable cause determination and on the technical sufficiency of a warrant must be objectively reasonable. Evidence should also be suppressed if the issuing magistrate or judge is misled by information in the affidavit that the affiant either knew was false or would have known was false except for his reckless disregard of the truth. Further, the Court stated that the good-faith exception does not apply where the magistrate wholly abandons his judicial role or where an officer relies on a warrant based on an affidavit "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" [*Goldston, supra* at 531, quoting *Leon, supra* at 923, quoting *Brown v Illinois*, 422 US 590, 610; 95 S Ct 2254; 45 L Ed 2d 416 (1975) (Powell, J., concurring in part).]

In the instant case, there is no suggestion that the magistrate was misled, or abandoned the judicial role. However, as *Goldston* reiterated, law enforcement officers share in the responsibility to respect probable cause requirements, such that one executing a warrant that cannot reasonably, objectively be understood to be predicated on probable cause is not acting in good faith. But finding a dereliction of police in their duties should be rare and made with care. "[Searches] pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." *Hellstrom, supra* at 196 (internal quotation marks and citations omitted).

In this case, in the course of denying defendant's motion to suppress, the trial court stated:

> Defendant moves to quash the search warrant used to authorize the search of his residence on grounds it was issued without the requisite showing of

> probable cause. In making this argument the defendant does not dispute that the police had probable cause to believe the defendant was selling marijuana from [a different address] . . . .
>
> Defendant argues, however, that the police had no basis to believe the defendant's Fourth Street address would contain evidence of the crime because they had no reason to believe that any illegal activity had occurred there.
>
> Rather, the only basis for the warrant was the fact the location was the defendant's residence from which the police concluded that evidence of a crime would be discovered there, thus, the warrant for that location was defective and should be quashed.
>
> The prosecutor disputes this reasoning and also invokes the good faith exception to the exclusionary rule. . . .
>
> * * *
>
> In the current case the warrant affidavit cannot be considered so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. The police, after all, clearly had probable cause to believe the defendant was selling marijuana out of a certain location [and] that he lived at the 4th Street address. This information was based on, [not] only on the tips of confidential informants but also on police observations which confirmed the tips. In this context, concluding that probable cause exists for the residence is not a conclusion that the police should automatically recognize as defective or constitutionally unreasonable. Rather, the police could reasonably rely on the magistrate's determination otherwise. If so, the deterrent effect of the exclusionary rule would not be furthered by applying the rule in this case and the good faith exception is fully applicable.

This Court reviews "de novo a trial court's ultimate decision on a motion to suppress," but reviews for clear error "the trial court's underlying findings of fact . . . ." *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001).

Defendant argues, and cites authority for the proposition that, evidence of a person's drug dealing elsewhere does not itself justify a search for drugs of that person's home because probable cause for such purposes requires more than mere residency. Here, however, the affidavit at issue does not specify any controlled substances as items to be searched for. Instead, the affidavit specifies "[r]ecords, books, receipts, notes, ledgers, personal diaries, telephone and address books, supplier and customer lists, and other papers pertaining to the transportation, ordering, purchase and distribution of controlled substances . . . ," and the resulting warrant mirrored those specifications. Again, defendant concedes that the police had a reasonable basis for searching the residence where the smaller quantity of cocaine was discovered, having had probable cause to believe that defendant was engaged in drug trafficking from that location. Concerning defendant's new address, where the larger quantity was discovered, if it does not logically follow, for purposes of establishing probable cause, that drug dealing from an earlier residence suggests drug dealing from a new one, it nonetheless does logically follow that drug

dealing *anywhere* would result in paperwork relating to such transactions inside the dealer's current residence.

Significantly, when the police executed the warrant reflecting the affidavit's specification of evidence merely of records of drug transactions and in the process determined that there might be controlled substances on the premises, the police prepared a second affidavit and obtained a second warrant, specifying illegal drugs as items to be found. The subject cocaine seized only after the second warrant was executed.

Because the warrant based on the first affidavit specified only records of drug trafficking, not illegal drugs themselves, any deficiency of probable cause in that affidavit, and thus the resulting warrant, would not have been so obvious to the police as to render their reliance on the warrant unreasonable. See *Hellstrom*, *supra* at 196. Accordingly, as the trial court held, the good-faith exception was fully applicable. Because the police were properly in the residence when acquiring probable cause of the existence of illegal drugs therein, the affidavit and warrant that led to seizure of that evidence were not the fruit of any poisonous tree. See *Wong Sun v United States*, 371 US 471, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963).

We note, however, that defendant's judgment of sentence indicates that his conviction in this case came about by way of a guilty plea. But, as noted, defendant was convicted in this case after a bench trial. After receiving the verdict of the court, defendant did plead guilty to being a second habitual offender, but the judgment of sentence does not list that as a separate basis for conviction or sentencing. Accordingly, we remand this case to the trial court for the ministerial task of preparing an amended judgment of sentence indicating conviction of the cocaine offense resulting from a bench trial, and habitual offender status resulting from a guilty plea.

We affirm and remand for ministerial correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Stephen L. Borrello